

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Case No. CR-22-00284-JD
)
JOSHUA DANIEL-ENOCH COX,)
)
Defendant.)

ORDER

Before the Court is Defendant Joshua Daniel-Enoch Cox’s Motion for Sentence Reduction under 18 U.S.C. § 3582(c)(2) (“Motion”) [Doc. No. 77]. Mr. Cox asserts that he is eligible for a sentence reduction under Amendment 821 to the United States Sentencing Guidelines as a zero-point offender. Motion at 1. Assistant Federal Public Defender Laura K. Deskin, in accordance with this District’s General Order 23-6 and this Court’s Order [Doc. No. 80], filed a Notice Regarding Defendant’s Ineligibility for Reduction of Sentence Under 18 U.S.C. § 3582(c)(2) Based on the Retroactive Application of USSG Amendment 821 [Doc. No. 82].

The United States responded in opposition to the Motion [Doc. No. 85], and the United States Probation Office (“USPO”) filed a Preliminary Report for Consideration of Sentence Reduction Based on Amendment 821 (“Preliminary Report”) [Doc. No. 78]. For the reasons stated below, the Court dismisses the Motion for lack of jurisdiction. Because Mr. Cox was convicted of a sex offense under Chapter 117 of Title 18 of the United States Code, he is ineligible for a reduction under USSG § 4C1.1(a)(5).

I. BACKGROUND

On October 20, 2022, Mr. Cox entered a plea of guilty to Count 4 of the Indictment charging him with interstate travel with intent to engage in a sexual act with a minor, in violation of 18 U.S.C. § 2423(b). [Doc. Nos. 14, 28–32]. On August 21, 2023, the USPO filed the Second Revised Final Presentence Investigation Report (“PSR”). [Doc. No. 38].

The PSR calculated a total criminal history score of zero for Mr. Cox, placing him in a criminal history category of I. PSR ¶ 65. Based on a total offense level of 34 and a criminal history category of I, Mr. Cox’s advisory guideline range for imprisonment was 151 months to 188 months. *Id.* ¶ 102.

At the sentencing hearing held on September 19, 2023, the Court adopted the PSR without change. [Doc. No. 52 at 1], and sentenced Mr. Cox to a term of imprisonment of 216 months. Judgment at 2 [Doc. No. 51 at 2].

II. DISCUSSION

Congress has authorized courts to modify prison sentences only under limited circumstances. *See* 18 U.S.C. § 3582(c); *United States v. Mendoza*, 118 F.3d 707, 709 (10th Cir. 1997) (explaining that district courts lack inherent authority to modify a previously imposed sentence absent statutory authorization); *United States v. Blackwell*, 81 F.3d 945, 947 (10th Cir. 1996) (recognizing that a “district court is authorized to modify [the defendant’s] sentence only in specified instances where Congress has expressly granted the court jurisdiction to do so”).

One basis of authority is 18 U.S.C. § 3582(c)(2), which allows for a possible sentence reduction for a defendant “who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission” 18 U.S.C. § 3582(c)(2). In such a case, the Court “may” reduce a sentence if doing so would be consistent with the factors in 18 U.S.C. § 3553(a) and consistent with the applicable policy statements issued by the Sentencing Commission.

See id.

“Section 3582(c)(2) prescribes a two-step process.” *United States v. Battle*, 706 F.3d 1313, 1317 (10th Cir. 2013). At step one, the district court must follow the Sentencing Commission’s ““instructions in [USSG] § 1B1.10 to determine the prisoner’s eligibility for a sentence modification and the extent of the reduction authorized.”” *United States v. Piper*, 839 F.3d 1261, 1266 (10th Cir. 2016) (quoting *Dillon v. United States*, 560 U.S. 817, 827 (2010)); *see United States v. White*, 765 F.3d 1240, 1245 (10th Cir. 2014) (explaining that the first step, “a matter of law, is whether a sentence reduction is even *authorized*”). At step two, the district court considers whether such reduction ““is warranted in whole or in part”” based on the applicable § 3553(a) factors and policy statements. *Piper*, 839 F.3d at 1266; *see White*, 765 F.3d at 1245 (explaining that the second step, “a matter of discretion, is whether an authorized reduction is in fact *warranted*”). Additionally, the district court ““may consider’ the defendant’s post-sentencing conduct.” *United States v. Osborn*, 679 F.3d 1193, 1195 (10th Cir. 2012) (quoting USSG § 1B1.10, cmt. n.1(B)(iii)). Section 3582(c)(2), however, does not provide a new sentencing proceeding. *See Piper*, 839 F.3d at 1266 (explaining that

§ 3582(c)(2)'s process "authorize[s] only a limited adjustment to an otherwise final sentence and not a plenary resentencing proceeding" (internal quotation marks and citations omitted)).

If a retroactive amendment to the guidelines "does not have the effect of lowering the defendant's applicable guideline range," a reduction in the defendant's sentence is inconsistent with the Sentencing Commission's policy statements and not authorized by § 3582(c)(2). USSG § 1B1.10(a)(2)(B). "Accordingly, a reduction in the defendant's term of imprisonment is not authorized under 18 U.S.C. § 3582(c)(2) and is not consistent with [the Commission's] policy statement if . . . an amendment . . . is applicable to the defendant but the amendment does not have the effect of lowering the defendant's applicable guideline range because of the operation of another guideline or statutory provision." USSG § 1B1.10, cmt. n.1(A).

Based on the Court's review of the parties' submissions and the USPO's Preliminary Report, the Court finds that Mr. Cox is not eligible for a sentence reduction under Amendment 821. Relevant here is Part B of Amendment 821, which created a new guideline—USSG § 4C1.1—providing for a decrease of two offense levels for "Zero-Point Offenders." *See* USSG Suppl. to App. C, Amend. 821 (Part B) (Zero-Point Offenders). With respect to USSG § 4C1.1, a defendant is eligible for a two-level reduction in his offense level if he or she meets all the following criteria:

- (1) the defendant did not receive any criminal history points from Chapter Four, Part A;
- (2) the defendant did not receive an adjustment under § 3A1.4 (Terrorism);

- (3) the defendant did not use violence or credible threats of violence in connection with the offense;
- (4) the offense did not result in death or serious bodily injury;
- (5) the instant offense of conviction is not a sex offense;
- (6) the defendant did not personally cause substantial financial hardship;
- (7) the defendant did not possess, receive, purchase, transport, transfer, sell, or otherwise dispose of a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
- (8) the instant offense of conviction is not covered by § 2H1.1 (Offenses Involving Individual Rights);
- (9) the defendant did not receive an adjustment under § 3A1.1 (Hate Crime Motivation or Vulnerable Victim) or § 3A1.5 (Serious Human Rights Offense); and
- (10) the defendant did not receive an adjustment under § 3B1.1 (Aggravating Role) and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848.

See USSG § 4C1.1(a) (Nov. 2023).¹

Although Mr. Cox did not receive any criminal history points from Chapter Four, Part A, of the Sentencing Guidelines, his instant offense of conviction²—a sex offense under Chapter 117 of Title 18, United States Code—renders him ineligible under § 4C1.1(a)(5) for a sentence reduction. *See USSG § 4C1.1(a)(5), (b)(2)(iii).*

¹ The Sentencing Guidelines were amended on November 1, 2024, and USSG § 4C1.1(a)(10) was split into two provisions, (a)(10) and (a)(11). However, those changes do not impact the Court’s analysis here regarding § 4C1.1(a)(5), which remains unchanged following the recent amendments.

² A violation of 18 U.S.C. § 2423(b) (interstate travel with intent to engage in a sexual act with a minor) falls under Chapter 117 of Title 18 of the United States Code.

Thus, because the reduction is not authorized, the Court lacks jurisdiction under § 3582(c)(2) to modify Mr. Cox's sentence and dismisses the Motion. *See White*, 765 F.3d at 1250 (explaining that where a defendant is “ineligible to receive a sentence reduction under § 3582(c)(2), . . . dismissal for lack of jurisdiction rather than denial on the merits is the appropriate disposition”); *see also United States v. Angulo-Lopez*, 755 F. App'x 811, 813 (10th Cir. 2018) (unpublished) (affirming the district court's dismissal for lack of jurisdiction where Amendment 782 did not affect the defendant's guideline range).

III. CONCLUSION

Defendant Joshua Daniel-Enoch Cox's Motion for Sentence Reduction under 18 U.S.C. § 3582(c)(2) [Doc. No. 77] is DISMISSED for lack of jurisdiction.

IT IS SO ORDERED this 15th day of November 2024.



JODI W. DISHMAN
UNITED STATES DISTRICT JUDGE